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**DISTRICT IV**

November 12, 2018

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You are hereby notified that the Court has entered the following opinion and order:

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2017AP1250

State ex rel. Robert D. Fernandez-Close v. Jon Litscher  
(L. C. # 2016CV3008)

Before Lundsten, P.J., Sherman, and Blanchard, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Robert D. Fernandez-Close, pro se, appeals the circuit court's order that dismissed Fernandez-Close's mandamus action seeking declaratory and injunctive relief against the Department of Correction (DOC) and a return of sex-offender fees collected from Fernandez-Close during his incarceration. Fernandez-Close also appeals the court's order denying reconsideration. Based upon our review of the briefs and record, we conclude at conference that

this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup> We summarily affirm.

Fernandez-Close petitioned the circuit court for a writ of mandamus, seeking a declaratory judgment and injunction to prevent the DOC from collecting the annual sex offender registration fee from incarcerated sex offenders. Fernandez-Close also sought a return of sex offender registration fees that Fernandez-Close had paid while incarcerated. The State moved to dismiss the action, arguing that the DOC was authorized by statute to collect the fees. The circuit court dismissed the action, and denied Fernandez-Close's subsequent motion for reconsideration.

“For a writ of mandamus to issue, the petitioner for the writ must establish that: (1) he possesses a clear legal right to the relief sought; (2) the duty he seeks to enforce is positive and plain; (3) he will be substantially damaged by nonperformance of such duty; and (4) there is no other adequate remedy at law.” *State ex rel. Robins v. Madden*, 2009 WI 46, ¶10, 317 Wis. 2d 364, 766 N.W.2d 542. Here, Fernandez-Close did not establish a clear legal right to the relief sought. Thus, the court properly dismissed the mandamus action and denied reconsideration.

Under WIS. STAT. § 301.45(1g)(b), a person must comply with sex offender registration reporting requirements if he or she “[i]s in prison ... on or after December 25, 1993, for a sex offense.” Under § 301.45(10), the DOC “may require a person who must register as a sex offender to pay an annual fee to partially offset its costs in monitoring persons who must register as sex offenders.” Fernandez-Close does not dispute that he is in prison for a sex offense. Thus,

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Fernandez-Close must comply with sex offender registration requirements and the DOC may require him to pay an annual fee.

Fernandez-Close argues, however, that the DOC is not authorized to collect the sex offender registration fee from him because, Fernandez-Close asserts, he is not “a person who must register as a sex offender” under WIS. STAT. § 301.45(10) while he is in prison. Fernandez-Close asserts that a person in prison is not “a person who must register as a sex offender” and does not become one until he or she is required to provide information to the DOC upon his or her release from prison, as set forth under § 301.45(2)(d), (e)1m., and (e)4. (requiring a person to provide the required sex offender registration information to the DOC upon being released to parole or extended supervision or, if released at the end of his or her sentence, no later than ten days before being released from prison) and subdivisions (3)(a)2. and 2m. (requiring a person to provide the required sex offender registration information to the DOC once each calendar year to the DOC upon being released to parole or extended supervision or, if being released at the end of his or her sentence, before release from prison). Fernandez-Close also argues that the DOC is not required to enter Fernandez-Close’s information into the registry on his behalf because, he asserts, he is not under the “supervision” of the DOC while in prison. *See* § 301.45(2)(b) (“If the [DOC] has supervision over a person subject to [§ 301.45] (1g), the [DOC] shall enter into the registry under this section the information specified in par. (a) concerning the person.”). Fernandez-Close asserts that, while he is in prison, he is exempt from any reporting requirement

and therefore he is not “a person who must register as a sex offender” such that a fee may be imposed under § 301.45(10).<sup>2</sup> We are not persuaded.

The DOC must “maintain a registry of all persons subject to [WIS. STAT. § 301.45](1g),” regardless of how that information is collected or entered into the registry. *See* WIS. STAT. § 301.45(2)(a). Section 301.45(10) authorizes the DOC to require a person who must register as a sex offender to pay an annual fee to partially offset its costs in monitoring persons who must register as sex offenders. Section 301.45(10) does not limit the DOC’s authority to collect an annual sex offender registration fee only to those persons who are required to provide their information to the DOC for entry into the sex offender registry. That is, § 301.45(10) does not define “a person who must register as a sex offender” as a person who must provide his or her information to the DOC under § 301.45(2)(e) and (3)(a). Nor does § 301.45(10) link the DOC’s authorization to collect a fee to whether the DOC has entered the person’s information in the registry. To the contrary, § 301.45(10) authorizes the DOC to collect a fee from any person who must register as a sex offender, regardless of the manner in which that information will be collected and placed on the registry. “A person who must register as a sex offender” includes a person in prison after December 25, 1993, for a sex offense, such as Fernandez-Close. *See* § 301.45(1g)(b).

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<sup>2</sup> Fernandez-Close also argues that prisoners are not subject to the annual sex offender registration fee because, Fernandez-Close asserts, the sex offender registration program is part of the Department of Community Corrections, not the Division of Adult Institutions. He contends prisoners are subject only to the rules of the Division of Adult Institutions. This argument is insufficiently developed and lacks citation to authority. Accordingly, we decline to address it. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

In sum, regardless of the timing or manner in which the information for the registry must be collected and entered, a person who must register as a sex offender can be required to pay an annual fee.<sup>3</sup> *See* WIS. STAT. § 301.45(10). Fernandez-Close is a person who must register as a sex offender. *See* § 301.45(1g)(b). Because Fernandez-Close has not established that he has a clear legal right to a declaratory judgment and injunction preventing the DOC from collecting a sex offender registration fee from incarcerated sex offenders, or to an order for the DOC to return all such fees collected, the circuit court properly dismissed his petition for a writ of mandamus.

Therefore,

IT IS ORDERED that the orders are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*

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<sup>3</sup> To the extent that Fernandez-Close intends to argue that the statutes should not require incarcerated offenders to pay the annual sex offender registration fee for policy reasons, that argument is properly addressed to the legislature, not the courts.